

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROSEMARY GARITY,
Plaintiff,
v.
USPS PMG MEGAN J. BRENNAN,
Defendant.

Case No. 2:11-cv-01805-RFB-CWH

ORDER

I. INTRODUCTION

Before the Court are Defendant's Motion for Re-Taxation of Costs, ECF No. 534; Plaintiff's Motion for Re-Taxation of Costs, ECF No. 535; and Plaintiff's Motion to Enforce Compliance with Court Orders, ECF No. 542.

II. PROCEDURAL BACKGROUND

Plaintiff Rosemary Garity filed the Complaint in this action on November 9, 2011. ECF No. 1. After discovery and dispositive motions were filed, a bench trial was held on January 16, 17, 18, 19, 24 and February 8, 2018, on Plaintiff's race discrimination and disability discrimination claims. ECF Nos. 429, 432, 433, 434, 439, 452. The Court issued its findings of fact and conclusions of law on March 31, 2019. ECF No. 478. The Court entered judgment in favor of Postmaster General Megan J. Brennan as to Plaintiff's Title VII race discrimination claim and in favor of Plaintiff as to the Rehabilitation Act disability discrimination claim. Id. at 18. The Court awarded Plaintiff equitable damages. Id.

1 Plaintiff filed a Motion for Fees and Attorney Consultations on April 15, 2019. ECF No.
2 484. Defendant Brennan responded on May 5, 2019. ECF No. 496. Plaintiff replied on May 10,
3 2019. ECF No. 499. Plaintiff filed a Motion for Relief Under Federal Rule of Civil Procedure 59
4 on April 26, 2019. ECF No. 493. Defendant responded on May 10, 2019. ECF No. 497. Plaintiff
5 replied on May 17, 2019. ECF No. 501. Plaintiff filed a Motion to Amend/Correct on April 26,
6 2019. ECF No. 494. Defendant responded on May 10, 2019. ECF No. 497. Plaintiff replied on
7 May 17, 2019. ECF No. 501. Defendant filed a Motion for Leave to File a Supplemental Brief
8 regarding its objection to Plaintiff's Bill of Costs (ECF No. 495) and response to Plaintiff's Motion
9 for Attorney Fees (ECF No. 484) on May 14, 2019. ECF No. 500. Plaintiff responded on May 17,
10 2019. ECF No. 502. Plaintiff filed a Motion for Permission to File Reply to Defendant's Exhibit
11 in the instant Motion for Leave to File Supplemental Brief (ECF No. 500) on May 17, 2019. ECF
12 No. 503. Plaintiff filed a Motion for Ruling on the above motions on June 24, 2019. ECF No. 512.

13 On March 31, 2020, the Court entered an order denying Plaintiff's Motion for Fees and
14 Attorney Consultations; granting Plaintiff's Motion for Relief Under Federal Rule of Civil
15 Procedure 59; and denying Plaintiff's Motion to Amend/Correct Order and Motion for Ruling.
16 ECF No. 513. The Order amended the Court's previous order and awarded Plaintiff equitable
17 damages on the Rehabilitation Act disability discrimination claim in the amount of \$22,187.39, as
18 well as pre-judgment interest. Id. Plaintiff filed a Notice of Appeal on April 2, 2020. ECF No. 514,
19 518.

20 On April 14, 2020, the Clerk of the Court entered costs taxed in the amount of \$10,784.03
21 against Defendant Brennan, as well as a Clerk's Memorandum Regarding Taxation of Costs. ECF
22 Nos. 522, 523. Plaintiff and Defendant subsequently filed Motions for Re-Taxation of Costs, ECF
23 Nos. 524, 525, which were fully briefed by April 23, 2020. ECF Nos. 527-530. On March 30,
24 2021, the Court denied the Motions for Re-Taxation of Costs without prejudice, pending Plaintiff's
25 appeal of this matter to the Ninth Circuit Court of Appeals. ECF No. 531. The Court instructed the
26 parties to resubmit their motions within 30 days of the final resolution of the appeal. Id.

27 On April 27, 2021, the Ninth Circuit affirmed this Court's judgment. ECF No. 532. A
28 petition for rehearing was denied by the Ninth Circuit on June 7, 2021. ECF No. 533. On June 7,

2021, Defendant refiled her Motion for Re-Taxation of Costs per the Court's order, ECF No. 534, which Plaintiff responded to on June 16, 2021, ECF No. 536. On June 16, 2021, Plaintiff refiled her Motion for Re-Taxation of Costs, ECF No. 535, which Defendant responded to on June 29, 2021, ECF No. 540, and Plaintiff replied to on July 5, 2021, ECF No. 541. On July 31, 2021, Plaintiff filed a Motion to Enforce Compliance with Court Orders. ECF No. 542. Defendant responded on August 13, 2021, ECF No. 543, and Plaintiff replied on August 17, 2021. ECF No. 544.

III. FACTUAL BACKGROUND

This case is a race and disability discrimination action. Plaintiff Rosemary Garity worked at the Pahrump Post Office and alleged adverse employment action from her supervisors on the basis of (1) her Caucasian race; and (2) her medically documented disabilities, which require minimal reasonable accommodation.

The Court held a six-day bench trial in this case from January 16, 2018 through February 8, 2018. The Court ruled in favor of Defendant as to Plaintiff's race discrimination action pursuant to Title VII of the Civil Rights Act of 1964 and in favor of Plaintiff as to Plaintiff's disability discrimination action pursuant to the Rehabilitation Act of 1973.

IV. LEGAL STANDARD

28 U.S.C. § 1920 governs taxation of costs and allows a judge or clerk to tax costs as to:

1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 of this title; [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

Federal Rule of Civil Procedure 54(2)(1) governs costs and states, *inter alia*, that "Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." Rule (54)(d)(1) clearly creates a presumption

1 that costs should be awarded to the prevailing party. Berkla v. Corel Corp., 302 F.3d 909, 921(9th
2 Cir. 2002).

3 The District of Nevada’s Local Rule 54-12 further provides that “[a] motion to re-tax must
4 specify the particular portion of the clerk’s ruling to which the party objects, and only those
5 portions of the clerk’s ruling will be considered by the court. The motion to re-tax will be decided
6 on the same papers and evidence submitted to the clerk.” D. Nev. Civ. 54-12.

7 8 **V. DISCUSSION**

9 **A. Motions for Re-Taxation of Costs (ECF Nos. 534, 535)**

10 Defendants ask the Court to retax the following costs: (1) fees for printed or electronically
11 recorded transcripts necessarily obtained for use in the case; and (2) fees for exemplification and
12 the costs of making copies of any materials where the copies are necessarily obtained for use in
13 the case. Defendant argues that while deposition transcript fees can be taxed whether or not the
14 transcript was used for trial, the Court should use its discretion to deny the costs of transcripts that
15 were not used at trial, and which were related solely or primarily to the claims Plaintiff was
16 ultimately unsuccessful on. Defendant identifies ten depositions that fall into these categories and
17 asks the Court to reduce Plaintiff’s request for deposition transcript costs by \$2,273.35—from
18 \$9,574.45 to \$7,300.70. Defendant also argues fees for exemplification and the costs of making
19 copies should be reduced to \$0. Plaintiff sought \$1,910.25 in fees. The Clerk found the copy costs
20 of ECF filings to be routine case papers and not taxable pursuant to Local Rule 54-6(b), but taxed
21 half the costs of trial exhibits “as Plaintiff has not made clear that all copies were for the judge and
22 opposing parties.” ECF No. 522 at 2. Defendant argues the costs should be reduced according to
23 the Court’s discretion, given Plaintiff’s failure to properly itemize her fees.

24 Plaintiff requests re-taxation of: (1) fees for printed or electronically recorded transcripts
25 necessarily obtained for use in the case; and (2) fees for exemplification and the costs of making
26 copies of any materials where the copies are necessarily obtained for use in the case; and (3)
27 attorney consultations. Plaintiff requests the full amount originally requested for fees for printed
28 or electronically recorded transcripts, totaling \$12,981.90. This request includes the cost of hearing

1 transcripts, totaling \$3,407.45. The Clerk determined that the Court never ordered the production
2 of hearing transcripts, and accordingly denied this cost. Plaintiff also requests the full amount of
3 \$1,910.25 for fees of exemplification and the cost of making copies. She argues “the trial exhibits
4 were prepared in advance based on the Order on record requiring the copies and were brought to
5 the trial as required.” ECF No. 535 at 5. Finally, Plaintiff requests attorney consultation costs
6 totaling \$14,639.01.

7 First, the Court affirms the entry of \$9,574.45 for the cost of fees for printed or
8 electronically recorded transcripts necessarily obtained for use in the case. Local Rule 54-4(a)(1)
9 provides that taxable deposition costs include “[t]he cost of a deposition transcript, either the
10 original or a copy, but not both, whether taken solely for discovery or for use at trial.” Where a
11 party has “limited . . . success” on its claims, the district court is within its discretion to reduce
12 costs and fees. Yonemoto v. Shulkin, 725 Fed. Appx. 482, 485 (9th Cir. 2018). The Court declines
13 to exercise its discretion in such a manner here, per Defendant’s request. The Court finds that the
14 claims in this case were highly interrelated, such that it would be inappropriate to distinguish
15 between which deposition transcripts should or should not be taxed. The Court also denies
16 Plaintiff’s request for re-taxation of the costs of hearing transcripts in the amount of \$3,407.45.
17 Local Rule 54-3 provides that “[t]he cost of transcripts of pretrial, trial, and post-trial proceedings
18 is not taxable unless the transcripts are (1) requested by the court or (2) prepared under a stipulation
19 approved by the court. Mere acceptance of the transcripts by the court does not constitute a
20 request.” The record contains no court order directing the production of hearing transcripts, nor of
21 any stipulation, approved by the court, for hearing transcripts. The Clerk properly denied taxation
22 of Plaintiff’s requested costs for hearing transcripts.

23 Second, the Court affirms the entry of exemplification and copies costs. Pursuant to Local
24 Rule 54-6, the Court may tax “the costs of copies of an exhibit necessarily attached to a filed
25 document” and “the costs of copies for trial exhibits for the judge and opposing parties,” but not
26 “the cost of reproducing copies of motions, pleadings, notices, and other routine case papers.” The
27 majority of Plaintiff’s copy costs stem from routine filings of case papers, which the Clerk properly
28 determined to be not taxable. The Clerk taxed half the costs of trial exhibits given that Plaintiff

1 failed to identify whether all copies were for the judge and opposing parties. The Court does not
2 agree with Defendant that the cost of trial exhibit copies should be reduced to zero. Nor, however,
3 does the Court find that Plaintiff is entitled to the full cost of the trial exhibits. In her motion for
4 re-taxation of costs, Plaintiff does not provide further clarification as to whether all 7,871 pages of
5 trial exhibits were for the Court and opposing parties. The Court accordingly declines to modify
6 the Clerk's entry.

7 Finally, the Court affirms the Clerk's denial of Plaintiff's request for re-taxation of attorney
8 consultation costs. Plaintiff sought fees for expert witnesses totaling \$11,500.00, "mileage costs"
9 totaling \$2,248.29, and "attorney consultation" costs totaling \$890.72. Local Rule 54-5(b)
10 provides that fees "for expert witnesses are not taxable in a greater amount than statutorily
11 allowable for ordinary witnesses," and Local Rule 54-11 provides that "expert witness fees" are
12 ordinarily not allowed. Under 28 U.S.C. § 1920(6), compensation is taxable only for court-
13 appointed experts. Ordinary witnesses may be paid an attendance fee of \$40.00 per day for each
14 day's attendance. Plaintiff's expert, Dr. Brown, only testified on one day, and was not a court-
15 appointed expert. The Clerk therefore properly taxed one day at the allowable \$40.00 witness fee.
16 Under Local Rule 54-11(k), attorney travel expenses are also not taxable, and thus the Clerk
17 properly declined to tax Plaintiff's "mileage costs." Finally, Plaintiff has cited no rule providing
18 that taxation is proper for attorney consultation costs. The Court declines to modify the Clerk's
19 entry on this item.

20 The Court therefore denies both Defendant's Motion for Re-Taxation of Costs and
21 Plaintiff's Motion for Re-Taxation of Costs.

22 B. Motion to Enforce Compliance (ECF No. 542)

23 Plaintiff moves for contempt and to compel sanctions arising from her allegation that
24 Defendant did not comply with the Court's Order at ECF No. 513. Plaintiff appears to argue that
25 Defendant is in contempt of court for failing to pay the judgment in this case. Defendant responds
26 that defense counsel has explained to Plaintiff that once the costs are awarded in this case, the
27 judgment would be amended, and Defendant will issue payment on the full amended judgment.
28 The Court agrees with Defendant that given the pending Motion for Re-Taxation of Costs,

1 Defendant's failure to pay Plaintiff the judgment entered in this case at an earlier point in time was
2 not error. The Motion to Enforce Compliance is therefore denied.

3
4 **VI. CONCLUSION**

5 **IT IS THEREFORE ORDERED** that the Motion for Re-Taxation of Costs (ECF No.
6 534) is **DENIED**.

7 **IT IS FURTHER ORDERED** that the Motion for Re-Taxation of Costs (ECF No. 535)
8 is **DENIED**.

9 **IT IS FURTHER ORDERED** that the Motion to Enforce Compliance (ECF No. 542) is
10 **DENIED**.

11
12 **DATE:** March 31, 2022.



14 **RICHARD F. BOULWARE, II**
15 **UNITED STATES DISTRICT JUDGE**